

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

| | | |
|-----------------------------|---|------------------|
| DUVALL CITIZENS FOR |) | |
| CLEAN WATER, |) | PCHB No. 91-63 |
| |) | |
| Appellant, |) | ORDER ON MOTIONS |
| v. |) | |
| |) | |
| STATE OF WASHINGTON, |) | |
| DEPARTMENT OF ECOLOGY; |) | |
| FORSSSEN EQUITIES, INC.; |) | |
| CEDARS OF DUVALL; CITY OF |) | |
| DUVALL; SHERMAN JONES/JOINT |) | |
| VENTURE, |) | |
| |) | |
| Respondents. |) | |

This matter came on for hearing before the Pollution Control Hearings Board on April 2, 1991, upon the motion of the Duvall Citizens for Clean Water for enforcement of order on consent, and upon the motion of Cedars of Duvall and Forssen Equities, Inc., to dismiss Randy Roeges and Duvall Citizens for Clean Water as parties in this action. Randy Roeges appeared on behalf of appellant. David A. Berkey appeared on behalf of respondent City of Duvall. Kenneth H. Davidson appeared on behalf of respondents Cedars of Duvall and Forssen Equities, Inc. Charles W. Lean, Assistant

1 Attorney General, Senior Counsel, appeared on behalf of
2 respondent Department of Ecology. The Pollution Control
3 Hearings Board, having considered the foregoing motions and
4 the attachments thereto, together with memoranda from all
5 parties, Hereby Orders:

6 Jurisdiction. Respondents have questioned the
7 jurisdiction of the Board to consider appellant's motion for
8 enforcement. The Board adopts Judge Harrison's Order Granting
9 Hearing on Motion (attached) as the order of the Board
10 regarding jurisdiction. The Order on Consent which is the
11 subject of appellant's motion was entered as a result of
12 several days of negotiations undertaken as part of the Board's
13 prehearing process. The parties should legitimately expect
14 that the Board would monitor compliance with such an order.
15 Under the facts and circumstances of this case the Board, in
16 furtherance of its jurisdiction, will do so.

17 Standing of Appellant. Appellant was a party to the
18 Order on Consent. The Board has before it an affidavit
19 concerning the residency of and interest of Randall Roeges,
20 but no information concerning the residency or interest of
21 other parties signing the appeal on behalf of the Duvall
22 Citizens for Clean Water. On this limited record, the Board
23 cannot at this time grant the motion of the Cedars of Duvall
24 to dismiss these parties. Accordingly, its motion is denied
25 at this time.

26 ORDER ON MOTIONS - 2

1 Merits. By a letter dated January 22, 1991 from
2 Mr. John H. Glynn of the Department of Ecology to Mayor Ervin
3 Harder of the City of Duvall, the Department of Ecology
4 expressed its conclusion that the City had violated the permit
5 effluent limitations in November, 1990 in such a manner as to
6 result in automatic reinstatement of the sewer ban (pursuant
7 to paragraph XII of the Order on Consent). The letter further
8 notes that the "most recent" (first half of January)
9 monitoring report indicates that the City is once again in
10 compliance with the effluent limitations. Ecology's letter
11 then notes that the Order on Consent is silent on the question
12 of what happens if the City comes back into compliance after
13 the sewer ban has been automatically reimposed. Under these
14 circumstances, Ecology determined that the order should be
15 construed to provide that the sewer ban should again be
16 lifted.

17 The issue for our determination is whether Ecology's
18 construction of the order is reasonable and lawful. In
19 addressing this issue we assume (without deciding) that the
20 City violated the effluent limitations in such a manner as to
21 lead to reinstatement of the sewer ban. (The Board is aware
22 that the City of Duvall has disputed and continues to dispute
23 any conclusion that effluent violations occurred which would
24 lead to a reinstatement of the sewer ban.) We find as a fact
25 not disputed by any party that the City had been in compliance

1 with the effluent limitations for at least two consecutive
2 weeks by mid-January, 1991. We further note that no party has
3 introduced any evidence of noncompliance by the City after
4 that time.

5 Ecology's construction of the Order on Consent appears
6 reasonable. The Order provides for limited additional hookups
7 so long as the City continues to meet the applicable effluent
8 limitations and continues to upgrade its facilities. There is
9 no indication that the parties intended that a short-term
10 breakdown would result in a two-year sewer hookup ban even if
11 the facility was otherwise in compliance for that entire
12 period. Nor does it appear to us that such a requirement
13 would be reasonable. There is no evidence that the impact
14 upon the waters is any different now than it was prior to
15 November, 1990. Ecology is identified in the Order as the
16 issuing agency and the agency primarily responsible for its
17 enforcement; and, therefore, its construction of the terms of
18 the Order is entitled to weight.

19 \\\

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\


26 ORDER ON MOTIONS - 4

1 The interpretation of the Order on Consent by the
2 Department of Ecology contained in its letter of January 22,
3 1991 is affirmed and Appellant's Motion for Enforcement of
4 Order on Consent is denied.

5 DATED this 25th ^{October} ~~April~~, 1991.

6 POLLUTION CONTROL HEARINGS BOARD


7 
8 HAROLD S. ZIMMERMAN, Chairman

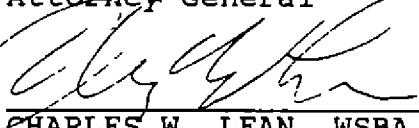
9 
10 JUDITH A. BENDOR, Member

11 
12 ANNETTE S. MCGEE, Member

13 Presented by:

14 KENNETH O. EIKENBERRY
15 Attorney General

16 
17 WILLIAM A. HARRISON
18 Administrative Appeals Judge

19 
20 CHARLES W. LEAN, WSBA #224
21 Assistant Attorney General
22 Senior Counsel
23 Counsel for Respondent
24 State of Washington,
25 Department of Ecology

26 1703/duvall ord